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In re Application of	:	
HAGHIRI, Yahya et al.	:	
Application No.: 09/926,010	:	DECISION ON
PCT No.: PCT/EP00/01272	:	
Int. Filing Date: 16 February 2000	:	PAPERS
Priority Date: 17 February 1999	:	
Attorney's Docket No.: HAGH3001/JEK	:	UNDER 37 C.F.R. 1.42
For: PORTABLE DATA SUPPORT WITH A	:	
DETACHABLE MINI CHIP CARD	:	

This is a decision on applicants' response to the Notification of Missing Requirements, filed 06 March 2002, which has been treated as a request for status under 37 C.F.R. 1.42.

BACKGROUND

On 16 February 2000, applicants filed international application PCT/EP00/01272. On 24 August 2000, a Demand was filed with the International Preliminary Examining Authority within nineteen months of the priority date, in which the United States was elected. Accordingly, the deadline for entry into the national stage in the United States was midnight on 17 August 2001.

On 14 August 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 06 September 2001, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the fee for filing the oath or declaration later than thirty months were required.

On 06 March 2002, applicants filed a response to Notification of Missing Requirements accompanied by, *inter alia*, a declaration executed by heirs of the deceased, a petition for a four month extension of time and the fee for the four month extension of time.

DISCUSSION

Under 35 U.S.C. §117, legal representatives of deceased inventors may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor. The "legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent." 37 CFR 1.42. As "the terms 'Executor' and 'Administrator' do not have exact counterparts in all foreign countries, ... the terms must be construed to fit the circumstances of the case." MPEP 409.01(d). Thus, "the person or persons having authority corresponding to that of executor or administrator are permitted to make application..." MPEP 409.01(d).

In this case, Szahra Haghiri, Mana Haghiri and Touba Haghiri each signed the declaration on their own behalf as heirs to Yahya Haghiri and Touba Haghiri signed the declaration as parent for minor Sina Haghiri, who also is an heir to Yahya Haghiri.

However, neither the heirs nor their attorney have stated that the listed heirs are the "sole heirs" or "all of the heirs" of Yahya Haghiri or that these heirs are collectively the "legal representative" of Yahya Haghiri. By only identifying each as an heir, the possibility of additional nonsigning heirs of Yahya Haghiri was left open.

Under 37 CFR 1.497(b)(2), the declaration must include the residence, mailing address and citizenship of the person(s) signing on behalf of the deceased inventor (in addition to the full name and citizenship of the deceased inventor). The declaration is signed by Touba Haghiri and the blocks that follow list the residence address as "Winzererstrasse 98, D-80797 Munchen, Germany" and citizenship as Iran. It is unclear whether this is the information of Touba Haghiri or the information for the deceased inventor, but both must be provided and the information provided must be clearly identified.

Additionally, a minor may sign the declaration provided the minor has capacity, *i.e.*, that the minor understands the document. MPEP §409. Otherwise, a legal representative must sign for the minor. See 37 CFR 1.43.


CONCLUSION

For the above reasons, the request for status under 37 C.F.R. 1.42 is **REFUSED**.

Applicant is required to submit an oath or declaration in compliance with 37 C.F.R. 1.497 and 1.42 within a time period of **TWO (2) MONTHS** from the mail date of this Decision. **THIS PERIOD FOR RESPONSE MAY BE EXTENDED UNDER 37 C.F.R. 1.136(a). FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT.** Any request for reconsideration of this decision should include a cover letter entitled "Renewed Submission Under 37 C.F.R. 1.42."

Please direct any further correspondence with respect to this matter to the Commissioner of Patents and Trademarks, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the Office of PCT Legal Administration.

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